IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 139 OF 2006

IN

STAMP NUMBER MAIN NO. 613 OF 2006

MR. GAJANAN SHETYE, VASCO DA GAMA, GOA. ....Applicant

Versus

M/S KHILJI AND KHURESHI BUILDERS AND ANR., ...Respondents

Mr. P.Kamat, Advocate for the Applicant.

Coram:- N. A. BRITTO, J.

Date:- 18th March, 2006

P.C.

Heard Shri Kamat, the learned Counsel on behalf of the applicant/Complainant.

2. The Complainant prosecuted the respondent/accused under Section 138 of the Negotiable Instruments Act, 1881, after a cheque dated 02.05.2003, for a sum of Rs.3,88,200/- bounced and after the accused failed to comply with the statutory notice which called upon the accused to make the payment due to the Complainant.

3. The Complainant examined himself, so did the accused no.2 in support of their respective cases. The defences taken by the accused were manifold. However, the Complainant in the course of his cross examination, was not even able to tell the Court as to on what basis the Complainant had arrived at the figure of Rs.3,88,200/-, in respect of the

cheque issued to the Complainant. Another inconsistency which has been noticed by the learned trial Court, is that the Complainant was unable to explain as to why the Complainant had to issue a notice calling upon the accused to pay an amount of a sum of Rs.1,47,380/-, by letter dated 29.03.2003. The learned J.M.F.C., in acquitting the accused has also taken into account the scope of the explanation below Section 138 of the Act, which provides that for the purpose of the said Section "debt or other liability" means a legally enforceable debt or other liability. In the course of his evidence, the Complainant also admitted that the said cheque for Rs.3,88,200/- was issued by the accused towards the payment on account of the supply of cement done by the Complainant to the accused. As per the Complainant himself, the said supply of cement was made to the accused in December, 1998, and the said cheque for Rs.3,88,200/-, was issued on 02.05.2003, much beyond a period of three years. Shri Kamat, the learned Counsel on behalf of the Complainant submits that prior to the issuance of the said cheque, the accused no.2 had admitted his liability but that admission was oral. An admission of liability in order to save limitation, had to be in writing. A cheque which is given has got to be towards a liability, which is existing and legally enforceable, as contemplated by the said explanation below Section 138 of the said Act. It is now well settled that Section 138 would be attracted only if the cheque is issued for the discharge of the legally enforceable debt or other liability and in case a cheque is issued for a time barred debt and it is dishonoured, the accused cannot be convicted under Section 138 of the Act on the ground that the debt was not legally recoverable. In this view of the matter, the acquittal of the accused under Section 138 of the Act could not be faulted. This is not a fit case to grant leave.

4. Application rejected.

N. A. BRITTO, J.

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